IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10700 OF 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MEHSANA DISTRICT PANCHAYAT - Petitioner(s)
Versus
MAHESHKUMAR CHANDULAL ACHARYA - Respondent(s)

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Appearance :
Shri H. S. Munshaw for Petitioner(s).
None for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/09/2007

ORAL JUDGMENT

Being aggrieved by the award dated 19th August, 2000 passed by the learned Labour Court, Kalol (N.G.) in Reference (LCK)

No.279 of 1987, the petitioner is before this Court with a submission that the learned Court below could not direct reinstatement of the workman, nor could direct payment of back-wages, nor could give him the benefit of continuity of service.

2. Shri H.S. Munshaw, learned Counsel for the petitioner, submitted that as each and every appointment order was looking to the exigency of the work and was limited to 29 days only, every order would come to an end and therefore, each appointment cannot be counted with each other. He, however, admitted that the finding of the learned Court below that the workman had worked for 240 days in twelve calendar months preceding the date of removal, is not a perverse finding.

3. Even if I assume that every order of appointment was for 29 days only and after an artificial break of a day or two or ten days, fresh order of appointment was issued, then, each appointment is to be counted as one and the working days if are more than 240 in total, then, the provisions of Section 25-F of the Industrial Disputes Act, 1947 would certainly apply. The learned Court below was not unjustified in directing reinstatement of the workman in view of the violation of Section 25-F of the Act.

4. It was next contended that the learned Court below was

unjustified in awarding back-wages from 1st May, 1983 to 31st December, 1987 despite the fact that the workman approached the learned Labour Court almost after four years of the alleged retrenchment. It was also contended that a person like the present respondent is also not entitled to the benefit of continuity of service because the appointment was not against the permanent vacancy, nor the workman was appointed as a temporary employee entitled to certain benefits.

5. Taking into consideration the case of the parties, this Court hereby directs that the award so far it relates to the grant of benefit of continuity of services is concerned, cannot be allowed to stand. That part of the award is hereby quashed.

6. In so far as the back-wages are concerned, true it is that from 1st May, 1983 to 31st December, 1987, the workman did not approach the learned Labour Court, but, once it is held that the retrenchment/removal was illegal, then, some back-wages are to be awarded to the workman. In the present set of circumstances, I think that if 40% back-wages from the date of the termination till the date of the reference are awarded in favour of the workman, then, the same would meet the ends of justice. It is, accordingly, ordered.

7. The petition to the extent indicated above is allowed. Rule is

made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**